



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0155]

RIN 1625-AA00

Safety Zone, Atlantic Intracoastal Waterway; Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Atlantic Intracoastal Waterway at Morehead City, North Carolina. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance on the U.S. 70 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 203.7, at Morehead City, North Carolina. The safety zone will temporarily restrict vessel movement within the designated area.

DATES: This rule is effective from 11 p.m. on July 19, 2014 to 5 a.m. on April 25, 2015. This rule will be enforced daily from 11 p.m. through 5 a.m. from July 19, 2014 to April 25, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0155]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LCDR Evelyn B. Samms, U.S. Coast Guard Sector North Carolina; telephone (910) 772-2207, e-mail Evelyn.B.Samms@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

A Notice of Proposed Rulemaking was published on April 01, 2014 in the Federal Register (79 FR 18245). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

North Carolina Department of Transportation has awarded a contract to FREYSSINET, INC of Sterling, Virginia to perform bridge maintenance on the U.S. 70 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 203.7, at Morehead City, North Carolina. Concrete demolition, repair, shotcreting work and bridge bearing repair will commence on July 19, 2014 with a completion date of April 25, 2015. The contractor will utilize a 40 foot by 60 foot barge as a work platform and for equipment staging. This safety zone will provide a safety buffer to transiting vessels as bridge repairs present potential hazards to mariners and property due to reduced horizontal clearance. Due to the need to protect mariners from the hazards associated with the bridge maintenance, vessel traffic will be temporarily restricted from transiting within the area. In addition, during this period the Coast Guard will require a two hour notification to the work supervisor for passage through the U.S. 70 Fixed Bridge along the Atlantic Intracoastal Waterway, mile 203.7, Morehead City, North Carolina. The bridge notification requirement will apply during the maintenance period for vessels requiring a horizontal clearance of greater than 40 feet.

C. Discussion of the Final Rule

The temporary safety zone will encompass the waters directly under the U.S. 70 Fixed Bridge crossing the Atlantic Intracoastal

Waterway, mile 203.7, at Morehead City, North Carolina (34°43'16"N, 076°41'37"W). In the interest of public safety, general navigation within the safety zone will be restricted during the specified date and times. Except for vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel may enter or remain in the regulated area. All vessels transiting this section of the waterway requiring a horizontal clearance of greater than 40 feet will be required to make a two hour advanced notification to the work supervisor while the safety zone is in effect. This zone will be in effect daily, 11 p.m. until 5 a.m., from July 19, 2014 through April 25, 2015.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it

under those Orders. This rule does not restrict traffic from transiting the designated portion of the Atlantic Intracoastal Waterway, it imposes a two hour notification to ensure the waterway is clear of impediment to allow passage to vessels requiring a horizontal clearance of greater than 40 feet.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which may be small entities: the owners or operators of commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Atlantic Intracoastal Waterway, 11 p.m. until 5 a.m., from July 19, 2014 through April 25, 2015.

This safety zone would not have a significant economic impact on a substantial number of small entities for the

following reasons. Although the safety zone will apply to this section of the Atlantic Intracoastal Waterway, vessel traffic requiring a horizontal clearance of greater than 40 feet will be able to request passage by providing a two hour advanced notification to the work supervisor. All those requiring less than 40 feet may pass at any time. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast

Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act

addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a

Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T05-0155 to read as follows:

§ 165.T05-0155 Safety Zone, Atlantic Intracoastal Waterway; Morehead City, NC.

(a) Regulated Area. The following area is a safety zone: This zone includes the waters directly under and 100 yards either side of the U.S. 70 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 203.7, at Morehead City, North Carolina

(34°43'16"N, 076°41'37"W).

(b) Regulations. The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05-0155. In addition the following regulations apply:

(1) All vessels requiring greater than 40 feet horizontal clearance to safely transit through the U.S. 70 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 203.7, at Morehead City, North Carolina must contact the work supervisor tender on VHF-FM marine band radio channels 10 and 13 or at (703) 786-7607 two hour in advance of intended transit.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF-FM marine band radio channels 13 and 16.

(3) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) Definitions. (1) Captain of the Port North Carolina means the Commander, Coast Guard Sector North Carolina or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to assist in enforcing the safety zone described in paragraph (a) of this section.

(3) Work supervisor means the contractors on site representative.

(d) Enforcement. The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This section will be enforced daily 11 p.m. until 5 a.m., from July 19, 2014 through April 25, 2015 unless cancelled earlier by the Captain of the Port.

Dated: May 19, 2014.

S. R. Murtagh,
Captain, U.S. Coast Guard,
Captain of the Port.

[FR Doc. 2014-13309 Filed 06/06/2014 at 8:45 am; Publication

Date: 06/09/2014]